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Subject: Latest 3 Cases: Symmonds v. Mahoney (Civil Rights), California v. Ellis (Constitutional Law), California v. Hull (Constitutional Law)
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February 2, 2019

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TAMAR FRANKEL

verdict post

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explaining how they work and why the con artists are able to deceive victims. Frankel also describes what we might learn from studying con artists and their victims.

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California Courts of Appeal Opinions

Symmonds v. Mahoney

Docket: B283529(Second Appellate District)
Opinion Date: February 1, 2019
Judge: Bendix
Areas of Law: Civil Rights, Constitutional Law, Entertainment & Sports Law

After plaintiff, Edward Joseph Mahoney's drummer, was terminated, plaintiff filed suit against Mahoney and others for discrimination on the basis of age, disability, and medical condition. In this appeal, defendants challenged the trial court's denial of a special motion to strike under Code of Civil Procedure section 425.16 (the anti-SLAPP motion). The Court of Appeal held that defendants met their burden to establish that Mahoney's decision to terminate plaintiff was protected conduct. The court held that Mahoney's selection of musicians to perform with him was an act in furtherance of the exercise of the right of free speech, an act in connection with an issue of public interest, and plaintiff's first cause of action arose from Mahoney's decision to terminate him. Accordingly, the court reversed and remanded for the trial court to determine whether plaintiff has demonstrated a probability of prevailing on the merits of his claim.

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California v. Ellis

Docket: D074710(Fourth Appellate District)
Opinion Date: February 1, 2019
Judge: Richard D. Huffman
Areas of Law: Constitutional Law, Criminal Law

In 1992, Victor Lee Ellis was sentenced to prison for seven years and was

accessed a fine under Penal Code section 1202.4, which qualified for garnishment under section 2085.5(a). In 1999, Ellis finished serving his prison sentence. Ellis returned to prison in 2011. Under section 2085.5 (a), the Department of Corrections and Rehabilitation resumed deducting a portion of Ellis's prison wages based on the fine arising out of his 1992 crime. Ellis argued maintains the CDCR did not have authority to garnish his prison wages under section 2085.5(a) because he was no longer in custody for the 1992 crime. The Court of Appeals disagreed, finding that if Ellis still owed a portion of a qualifying fine and was an inmate in a California prison, the CDCR could deduct a portion of his prison wages. Therefore, the superior court did not err in denying Ellis' motion to vacate restitution.

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California v. Hull

Docket: C079134(Third Appellate District)
Opinion Date: January 31, 2019
Judge: William J. Murray, Jr.
Areas of Law: Constitutional Law, Criminal Law

Defendant Tyrus Hull appealed his conviction for assaulting Marqurus Bonner with a deadly weapon (motor vehicle), for which he was sentenced defendant to two years in state prison. On appeal, defendant argued: (1) the trial court erred in admitting at trial a prosecution witness' preliminary hearing testimony after he invoked the right to remain silent because the defense did not have the opportunity to cross-examine the witness about a prior criminal conviction not disclosed by the prosecution until after the preliminary hearing or about alleged threats made to defendant’s wife the day after defendant’s arrest; (2) instead of allowing the prior testimony, either the trial court or the prosecutor should have provided the witness use immunity and the prosecutor failed to adequately explain his reason for declining to provide immunity; (3) the manner of reading the preliminary hearing testimony was inappropriate and imputed the demeanor of the reader to the witness; and (4) counsel at his preliminary hearing was constitutionally ineffective for failure to cross-examine the witness regarding his alleged participation in threatening and intimidating defendant’s wife the day after the alleged assault occurred. In the published portion of its opinion, the Court of Appeal concluded: (1) the trial court was not required

to grant immunity, because the defense did not establish that what it hoped to gain by cross-examination was clearly exculpatory and essential; (2) the prosecution was not obligated to explain not giving the witness immunity because the defense failed to show that the testimony it hoped to gain was clearly exculpatory and essential, and because defendant did not clearly assert that the prosecutor's refusal to grant immunity was prosecutorial misconduct; (3) failure to disclose the witness's criminal history before the preliminary hearing deprived defendant of the opportunity to cross-examine the witness about it at the preliminary hearing, but this error was harmless beyond a reasonable doubt; and (4) the defense could not forgo cross-examining a witness at a preliminary hearing about information then known to defendant or the defense team and later prevent the introduction of the preliminary hearing testimony at trial under Evidence Code section 1291 on the grounds that the defendant did not have the same motive or opportunity for cross-examination at the preliminary hearing. In the unpublished portion of its opinion, the Court concluded further there was nothing inappropriate about the reading of the preliminary hearing testimony, and that defendant failed to establish ineffective assistance of counsel.

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